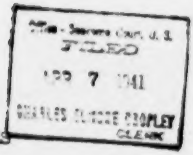

SUPREME COURT OF THE UNITED STATES

_____TERM, 1941.

No. 929

JAMES W. ROLAND,
Petitioner and Appellant below,

Vs.

PORT COMPRESS COMPANY,
Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE COUNTY COURT OF NUECES COUNTY, TEXAS, AND BRIEF IN SUPPORT THEREOF.

~~Mr. Lee Pressman of Washington, D. C.~~, Messrs. Jack K. Pedigo and Jay Kirkman of Corpus Christi, Texas, Mr. Gerald S. Gordon of Houston, Texas, and Mr. William E. Jetter of Ann Arbor, Michigan, counsel for Petitioner.

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_____TERM, 1941

No. _____

JAMES W. ROLAND,
Petitioner and Appellant below,

Vs.

PORT COMPRESS COMPANY,
Respondent and Appellee below.

PETITION FOR WRIT OF CERTIORARI TO THE COUNTY COURT OF NUECES COUNTY, TEXAS, AND BRIEF IN SUPPORT THEREOF.

TO THE HONORABLE CHARLES EVANS HUGHES, CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

On or about the 29th day of July, 1939, your petitioner, James W. Roland, was employed by the Port Compress Company at Corpus Christi, Texas. Under the terms of his employment, Roland was to, and did, transfer by means of a tractor cotton from the Port Compress Company's plant to various ships docked at the Port of Corpus Christi. Roland was so employed by the Port Compress Company for a period of slightly more than five weeks. He was paid at the rate of 25¢ per hour. During Roland's first week of employment he worked 70 hours, the second week he worked 60 hours, the third week 70 hours, the fourth week 60 hours and during the fifth week he worked 85 hours.

Believing that the Federal Fair Labor Standards Act of 1938, Title 29, Ch. 8, et seq., U.S.C.A., covered his type of employment, and thus that for all the hours worked in excess of forty-four (44) hours in any one week that he should have received pay at the rate of pay and a half, your petitioner, Roland, brought suit in the Justice's Court, Precinct One, Harris County, Texas, against the

Port Compress Company, respondent, for unpaid overtime wages, liquidated damages and reasonable attorneys fees as authorized by the Federal Fair Labor Standards Act. Respondent answered by filing a Plea of Privilege to be sued in Nueces County, Texas, where its principal office is located, in accordance with provision of the Venue Statute of Texas. Said cause was thereupon transferred to the Justice's Court, Precinct One, Place Two, Nueces County, Texas.

On October 15, 1940, the cause was called for trial, and your petitioner herein plead a cause of action under the Federal Fair Labor Standards Act. Said pleading was oral, as authorized by law in our Justice's Courts, Revised Civil Statutes of Texas, 1925, Article 2388, and the respondent herein having plead orally his defense to said cause of action, the cause was submitted to the Justice of the Peace, sitting without a jury, who rendered judgment in favor of respondent against your petitioner herein.

An appeal was taken from said judgment by your petitioner to the County Court of Nueces County,Texas, where the cause came on to be heard de novo, as authorized in appeals from the Justice's Court to the County Court, Revised Civil Statutes of Texas, 1925, Article 2178. On the 7th day of December, 1940, said cause was called for trial, and your petitioner herein and the respondent herein each announced ready for trial. Whereupon your petitioner demanded a trial by jury, which jury was duly impaneled; your petitioner plead orally a cause of action under the Federal Fair Labor Standards Act, such oral pleading being allowed by law, see Statement of Fact and Conclusions of Law, page 13-14 of record, Barnes v. Sparks, 131 S.W. 610, and Phipps v. Hemphill, 267 S.W. 310. Whereupon respondent urged to the Court his "Plea in Abatement" to which your petitioner duly excepted and denied. The jury panel was then retired pending hearing upon respondent's motion to abate the cause.

After argument of counsel and without hearing any evidence whatsoever upon the fact issues raised by said Plea in Abatement, and without submission of any of the fact issues to the jury, demanded by your petitioner, (see Findings of Fact, page 13 of record) the Court sustained in all parts over your petitioner's objection respondent's Plea in Abatement and dismissed the cause.

Your petitioner then immediately filed a motion for new trial, (see page 12,13 of record), which motion was denied by the Court, and then and there in open court counsel for petitioner gave notice of appeal (see page 13,14 of record).

The said County Court of Nueces County, Texas, is by statute the highest Court in this State in which a decision may be had on civil matters not involving more than One Hundred dollars, Revised Civil Statutes of Texas, 1925, Articles 2249 and 1819 as amended. The total amount claimed by petitioner in this suit is Fifty-one and 25/100 ($51.25) Dollars. The decree rendered by said County Court in dismissing said cause is a final judgment.

II.

Basis of Jurisdiction.

1. The date of judgment to be reviewed is December 7, 1940.

2. This Honorable Court has jurisdiction to review the decision of the County Court of Nueces County, Texas, by virtue of Title 28, Sec. 344 (b), U.S.C.A.

3. This is a proper case for the exercise of this Court of its power of review. (See First National Bank of Guthrie Center v. Anderson, 70 L. Ed. 295, 46 S. Ct. 138, 269 U. S. 341; Supreme Lodge etc. v. Knights of Pythias of North America, etc., 108 Miss. 280; North Carolina R. Co. v. Zachary, 58 L. Ed. 891).

III.

Statement of the Questions Presented.

1. Did the County Court of Nueces County, Texas, deny your petitioner the right of due process of law?

2. Did the County Court of Nueces County, Texas, err in sustaining respondent's Plea in Abatement without the hearing of any evidence on fact issues raised thereby, and without the submission of such issues to the jury demanded by your petitioner?

3. Did the County Court of Nueces County, Texas, err in denying petitioner a right claimed under the Federal Fair Labor Standards Act?

IV.

Reasons Relied Upon for Allowance of the Writ.

1. The ruling of the Honorable County Judge in deciding material questions of fact without the taking or hearing of any evidence whatever (see Statements of Fact and Conclusions of Law, page 12, 14 of the record herein) was so arbitrary and baseless as to be a deprivation of due process of law.

2. The judgment of the County Court of Nueces County, Texas, is erroneous in that:

(A) No evidence was heard upon the fact issues raised by respondent's Plea in Abatement.

(B) In all events said fact issues should have been submitted to the jury.

3. The said County Court denied your petitioner a right conferred upon him by virtue of the Federal Fair Labor Standards Act of 1938.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the County Court of Nueces County, Texas, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said County Court had in the case numbered and entitled on its docket No. 3496, James W. Roland, plaintiff, v. Port Compress Company, defendant, to the end that this cause may be reviewed and determined by this Court, as provided for by the Statutes of the United States; and that the judgment herein of said

County Court be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated March 6, 1941.

JAMES W. ROLAND

By _____,

Jack K. Riggs,

Jay Kirkman,

Gerald L. Gardner

William E. Petter

Counsel for Petitioner